IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.2353 OF 1991

Shri Vasant Ramchandra Deshpande
1025, E, Sadashiv Peth,
Shri Chintamani Society
Pune - 411 030 ... Petitioner

V/s.

1. State of Maharashtra
2. Director of Education
Maharashtra State, Central Bldg.,
Pune - 411 001

3. Nowrosjee Wadia College
conducted by Modern Education
Society, 19, Late Principal
V.K. Jog Path, Pune -411001

4. University of Pune
Ganeshkhind
Pune - 411 007 ... Respondents

Ms.T.Katdare with Ms.A.Jhaveri for Petitioner
Mr.A.P. Vanarse, AGP, for Respondent Nos.1 and 2
Mr.G.M. Khambate for Respondent No.3
Mr.R.R. Bhosale for Respondent No.4

CORAM: **H.L. GOKHALE &**
SMT.NISHITA MHATRE, JJ.

DATED: **SEPTEMBER 30, 2004**

ORAL JUDGMENT (PER H.L. GOKHALE, J.):-

. Heard learned Counsel for the parties. The Petitioner who was working as a lecturer in English in Respondent No.3-College affiliated to Respondent No.4 University has retired or a junior lecturer after filing of this writ petition some time in May 1999. He filed this Petition in the year 1991 seeking a pay protection since he had been absorbed in the college affiliated to

Respondent No.4 University after earlier putting service in a college affiliated to Bombay University and since he apprehended at the time of filing of the Petitioner that he may not be continued with Respondent No.3-college and the post would be given to somebody else. From the Petition in it appears, that he had two-fold grievances. Firstly, that he may not be absorbed in the senior college and that a post in the senior college would be given to somebody else and secondly his salary ought to be protected. He had prayed for an interim relief that the post in senior college ought not to be further advertised and he be continued in that post. The petition was admitted in August 1991 but no interim relief was granted. It appears that the Petitioner has continued thereafter and as stated above has retired in the year 1999 from the junior college. Presently, we are therefore, confining ourselves to the principal prayer in the petition which is with respect to a correct pay fixation. His retirement benefits will depend on that.

2. As stated above, the Petitioner worked earlier in different colleges and ultimately in the J.S.M. College at Alibaug where he was rendered surplus some time in the year 1981-82. Under the scheme that was prevalent at that time to deal with the problem of surplus teachers, the Deputy Director of Education, Pune

region intimated to the Principal of the Respondent No.3 college that the Petitioner was one such surplus teacher who was available. The Principal of Respondent No.3 college sent a letter to the Petitioner on 22.6.1982 referring to the communication from the Deputy Director of Education, Pune region and further informing him that there was a vacancy of junior college teacher in English in the scale of Rs.500-900 available in that college. The letter asked the Petitioner to inform the Principal as to whether he would like to accept that offer. The Petitioner accepted that offer and joined the college.

3. The Petitioner appears to have represented to the Principal in January 1989 that since he belonged to the protected category of teachers and since he was working from 1.7.1982, he be absorbed in a regular vacancy in the senior college which was likely to occur in a short time. The College appears to have written to the Petitioner on 14.6.1990 that even if he belongs to the protected category, the regular procedure for absorption cannot be dispensed with. It is at that stage that the present petition appears to have been filed. It is not disputed that the Petitioner was not absorbed in the senior college and continued all throughout in the junior college.

4. As stated above, now the principal prayer of the

Petition remains to be considered is for proper payscale. An affidavit in reply has been filed by one Shri R.A. Pradhan, Section Officer, Education and Employment Department affirmed on 24.7.1991. Mr.Pradhan has referred to Government Resolution dated 11.6.1996 of the Government concerning the problem of surplus teachers as also the subsequent decision of 27.4.1981. Mr.Pradhan has stated in paragraph 4 of his reply that no doubt the teachers who are covered under the resolution were entitled to protection, the Universities were maintaining the list of surplus teachers university-wise. In the case of the Petitioner, he was earlier attached to a college affiliated to Bombay University where he was rendered surplus. He joined the college affiliated to Pune University for the first time in 1.7.1982 and, therefore, was not shown on the list of surplus teachers on the Pune University. He has therefore, categorically stated that Petitioner’s joining the college of the University of Pune in July 1982 will have to be treated as a fresh employment.

5. Now if we turn to the Resolution of 11.6.1976. That resolution was passed by the State Government to deal with this problem of surplus teachers occurring from time to time. Appendix to this resolution contained the guidelines for absorption of teachers determined at the collegiate level. The teachers were

categorised in a few categories. First category was of those who had either been confirmed in clear vacancies or who had completed two years of continuous service in clear vacancies in a college on or before 7.2.1975; Second category was of those teachers who were in service on or before 7.2.1975 and were also in continuous service upto the end of the academic year 1975-76 and had completed more than two years of continuous service. The third category of teachers was of those who were in service on or before 7.2.1975 and were also in continuous service upto the end of the academic year 1975-76 in a college but had not completed two years of continuous service upto the end of the academic year 1975-76.

6. From this categorisation and the treatment given to these categories in the G.R., it is clear that those who had put in longer years of service and who were in category (i) were to be absorbed first thereafter those in category (ii) and thereafter the category (iii). There is no difficulty in stating that the Petitioner’s case fell in category (iii). This is what is averred in the affidavit in reply. Clause 3 of this appendix lays down a mechanism for regularisation. In sub-clause (C) of clause (2), it is laid down that the full surplus teacher in category (i) who are juniormost in that category should be given an option as to whether they

are willing if so directed to be appointed in some other college in the State where they can be given full work load at the collegiate level and can be continued as fully occupied teachers. This scheme in clause (3) which is for category (i) to begin with is extended to categories (ii) and (iii) also in clause 3 of this resolution. Clause 3 lays down that after the teacher in category (i) are dealt with in the manner indicated in paragraph 2 the cases of teachers in category (ii) should be taken for consideration. If after absorbing the surplus teachers of categories (i) and (ii), still if any vacancy remains then teachers in categories (iii) and (iv) should be absorbed in those vacancies.

7. It is thus clear that the letter written by the Principal of the College in June 1982, asking the Petitioner to give his willingness was in pursuance of this G.R. The letter also, as stated earlier, clearly refers to the reference received from the Deputy Director of Education, Pune region and the contents of this letter of the Principal of the College are not disputed in the reply filed by the State. Reliance is also placed on the fact that the Universities are maintaining University-wise list of surplus teachers. In our view, that cannot take away the force of clause (C) r/w (A) r/w clause (3) of G.R. dated 11.6.1976. These clauses provide for the consideration of category

(iii) teachers for vacancies, if any. Obviously in pursuance of this G.R. that the Deputy Director of Education had written to the Principal of the college and the Principal had in turn written to the Petitioner. This G.R. thus, under the above clauses takes into consideration the surplus teachers across a University in another college in the State. That has been done in the case of the Petitioner and therefore whether the Universities maintain the list of surplus teachers university-wise is not material.

8. Here is a case where a person has been asked to give his willingness to go from one university area to another university area. This clearly is in consonance of the G.R. and the Petitioner having gone there, will be eligible to the protection of the G.R. and therefore, will be entitled to the protection of his payscale and the salary to which he would be entitled to under the G.R. The actual salary received by the Petitioner at any given point of time in the year 1991 or thereafter has not been placed on record. So we cannot enter into the area of actual calculations. That will be for the concerned Department of the Government and the College to work it out. On the strength of this judgment, the college will forward his papers to the University and to the State Government for the arrears arising from correct payscale as also correct retirement

benefits if they are not so paid. Respondent No.3 college will complete calculations within three months and preferably at the end of December 2004 and forward the papers to the Deputy Director of Education for further follow-up for clearing his arrears as also to fix his correct pension.

9. We expect the Deputy Director to take further follow-up action at the earliest and in any case within three months after receiving the papers from the college.

10. Rule made absolute in these terms.

(H.L. Gokhale, J.)

(Nishita Mhatre, J.)